

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

June 12, 2008

Third Party Communication: None  
Date of Communication: Not Applicable

Number: **200839033**  
Release Date: 9/26/2008  
Index (UIL) No.: 1221.00-00, 1221.05-00  
CASE-MIS No.: TAM-126318-08

Director of Field Operations, Manhattan  
L:F:DFO:M

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification No  
Years Involved:  
Date of Conference:

LEGEND:

Taxpayer =

On August 31, 2006, a technical advice memorandum (TAM-119153-04, TAM 200651033) was issued concerning Taxpayer. The TAM concluded, in part, that Taxpayer's dollar rolled mortgage backed securities were not acquired in the ordinary course of trade or business for services rendered within the meaning of section 1221(a)(4).

On April 23, 2008, the Treasury Department and the IRS published in the Federal Register (73 FR 21861) a withdrawal of notice of proposed rulemaking relating to the circumstances in which accounts or notes receivable are "acquired ... for services rendered" within the meaning of section 1221(a)(4). The withdrawal of notice of proposed rulemaking states that the IRS will not challenge return reporting positions of taxpayers under section 1221(a)(4) that apply existing law, including Burbank Liquidating Corp. v. Commissioner, 39 T.C. 999 (1963), acq. sub nom. United Assocs.,

Inc., 1965-1 C.B. 3, aff'd in part and rev'd in part on other grounds, 335 F.2d 125 (9<sup>th</sup> Cir. 1964); Federal National Mortgage Association v. Commissioner, 100 T.C. 541 (1993); and Biedfeldt v. Commissioner, 231 F.3d 1035 (7<sup>th</sup> Cir. 2000), cert. denied, 534 U.S. 813 (2001). See also Rev. Rul. 80-56, 1980-1 C.B. 154; Rev. Rul. 80-57, 1980-1 C.B. 157.

In order to place Taxpayer on equal footing with other taxpayers that may rely on the withdrawal of notice of proposed rulemaking, the portion of the TAM relating to issue 1 (the section 1221(a)(4) discussion) is withdrawn. The portion of the TAM regarding issue 2 (the closing agreement) is unaffected by this document.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.